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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1992

Addendum

India 1/

[29 November 1995]

1/ For the initial report submitted by the Government of India, see CCPR/C/10/Add.8; for its consideration by the Committee, see CCPR/C/SR.493, SR.494, and SR.498 and Official Records of the General Assembly, Thirty-ninth session, Supplement No. 40 (A/39/40), paras. 239-286. For the second periodic report submitted by India, see CCPR/C/37/Add.13; for its consideration by the Committee, see CCPR/C/SR.1039-SR.1042 and Official Records of the General Assembly, Forty-sixth session, Supplement No. 40 (A/46/40). paras. 258-312.

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Introduction

1. India acceded to the International Covenant on Civil and Political Rights on 10 July 1979. India has periodically fulfilled its obligations in accordance with the requirements of article 40 of the Covenant and has submitted two periodic reports so far.

2. India's third periodic report updates the information presented in the second report and also addresses the queries raised by the members of the Human Rights Committee during the consideration of its earlier reports. In compliance with the guidelines for preparation of periodic reports, India's third periodic report comprises two parts: Part I indicating (a) Government's overall approach to the observance, promotion and protection of human rights and (b) the major institutional developments since submission of the second period report; and Part II which provides information article-by-article, on fulfilment of India's obligations under ICCPR.

I. GENERAL INFORMATION

3. India's general approach to the duties and obligations of States under the Covenant is that each State party must strive to recognize and give effect to the various rights and duties embodied in the Covenant in the best possible manner open to it having regard to the geographical situation of the country, its size, the population, its social structure and the political environment so that each and every section of the society, irrespective of ethnic origin, colour, sex or religious belief, may be enabled to enjoy their human rights. India also perceives it as a duty of the State to promote awareness of rights among its people and provide adequate and effective machinery to ensure observance and enforcement of such rights. Given its extensive territorial domain, the vastness of its population and the complex social structure, in a country like India cases of violation of rights, whether attributable to the agencies of the State or to private individuals or groups, may sometimes occur despite best efforts. It is incumbent upon the State to provide appropriate machinery for the detection, investigation and punishment of such violations and to ensure that the machinery is readily accessible for the redress of the wrong. India fully recognizes, consistent with what is stated in the preamble to the Covenant, that every individual has a duty to other individuals and to the community in the matter of observance of the rights recognized therein and perceives it as its duty to take preventive measures to ensure that the community as a whole is not deprived of enjoyment of its rights at the hands of individuals or groups of individuals, particularly in the context of increasing acts of terrorism and other disruptive activities. India firmly believes that in the matter of implementation of the provisions of the Covenant, what is of paramount importance is the country's overall performance and its resolve to translate into reality the enjoyment of rights by its people, to be viewed from the Constitution and the laws as well as the effectiveness of the machinery it provides for enforcement of the rights.

Socio-economic and cultural diversity

4. History has made India the home of people of diverse origins, many of whom came from beyond the country's borders. Hinduism, Buddhism, Jainism and later Sikhism were faiths cradled by India. Christianity, in the coastal

regions of western India, goes back to apostolic times. Islam came to India within the first century of its emergence. India is thus a complex mosaic of different religions and cultures. It has a tolerant eclectic society, where people of different faiths and persuasions have joined together in building the world's largest democracy, where universally recognized human rights and fundamental freedoms are guaranteed to all, without discrimination on grounds of creed, community or gender. The magnitude of India's diversity is indicated by the 1991 census, which recorded a population of 879 million, with a growth rate of lower than 2 per cent per annum (since the mid-1980s), while its linguistic diversity is reflected in the 18 major languages which are recognized in Schedule VIII of the Constitution and the 844 different dialects that are spoken by its people.

5. The observance, promotion and protection of human rights is a complex task in a country of India's ethnic, religious, linguistic and economic diversity. India's commitment to the observance, promotion and protection of human rights, however, predates accession to the International Covenant on Civil and Political Rights and indeed permeates the political and social philosophy and foundation of independent India. In essence, India's approach to the observance, promotion and protection of human rights has been characterized by a holistic, multi-pronged effort. Primarily, this effort has revolved around the following constituent elements: (a) creation and strengthening of an institutional framework; (b) an effective network of mutually reinforcing safeguards both within and outside the institutional framework, buttressed by a policy of regular review and strengthening of safeguards; (c) a policy of transparency, responsiveness and dialogue with domestic and international non-governmental organizations, adherence to major international human rights instruments and cooperation with the United Nations human rights machinery; (d) a holistic approach attempting to tackle poverty and underdevelopment, which in the case of many rights, e.g. the right of a child to be protected against exploitation, right to life, etc., can be a significant impediment in the effective and meaningful exercise of human rights by all citizens in equal measure; (e) integral to this approach has been a policy of affirmative action for the upliftment and promotion of socially and economically vulnerable sections of society; (f) an attempt to generate awareness through dissemination of the relevant covenants and, more significantly, through promotion of literacy and education; and (g) creation of an environment conducive to the exercise of human rights by all citizens, in all parts of India, in equal measure, including through creation of a stable and secure law and order environment.

Institutional framework

6. To a large extent, the institutional framework for the observance, promotion and protection of human rights derives from the Constitution of India which provides for a single, uniform citizenship in a sovereign, secular, democratic polity and confers the right to vote on every citizen of India above the age of 18 years. It enshrines the fundamental rights of every Indian citizen, including freedom of speech, expression, belief, assembly, association, migration, choice of occupation or trade without discrimination on grounds of race, religion, creed or gender which are enforceable in a court of law.

Separation of powers and independence of judiciary

7. The institutional safeguards for the rights enshrined in the Constitution include an independent judiciary and the separation of judicial and executive functions. Legislation in India is subject to review by courts as regards its constitutionality and the exercise of executive power is subject to different forms of judicial review. In the event of infringement of an individual's fundamental rights, the highest court in the land, the Supreme Court, can be pressed into action to provide immediate relief.

Legal status of the Covenant and its embodiment in law

8. In India, treaties and covenants are not self-executing but require enabling legislation, or constitutional and legal amendments in cases where existing provisions of law and the Constitution are not in consonance with the obligations arising from the Treaty or Covenant. In this case, the rights and freedoms reflected in the Covenant are guaranteed in one of three categories:

(a) Rights recognized under the Constitution. These include fundamental rights (arts. 12-35) including rights of equality before the law, prohibition of discrimination, equality of opportunity, freedom of speech, protection of personal liberty and life, right to be protected against exploitation, prohibition of forced labour, etc.;

(b) Rights recognized under other legislation. These include (i) criminal legislation, e.g. Indian Penal Code and Criminal Procedure Code; (ii) customary and codified law governing freedom to marry and the right to found a family, etc.; while (iii) the right to freedom of association, etc. are protected under the Constitution and further regulated by labour legislation;

(c) Clarification and interpretation of these rights by the judiciary. In India a further safeguard within the institutional framework is the provision whereby not only affected individuals but any member of the public, voluntary associations or a public-oriented organization can move the judiciary, through the process of public interest litigation, to either seek enforcement of fundamental rights or create procedurally novel human rights jurisprudence.

Legal and administrative remedies

9. Other institutional safeguards include legal remedies for seeking redress when human rights have been violated, e.g. by moving the High Court and the Supreme Court. This "safeguard", to move the Supreme Court directly, is itself enshrined in the Constitution as a fundamental right and is held by the Supreme Court to be unamendable and unalterable even by unanimous vote of Parliament. Further to ensure against arbitrary or unlawful administrative action, the Supreme Court and the High Court have been empowered to issue appropriate directions/orders or writs including mandamus, habeas corpus, prohibition, quo warrants and certiorari. The Supreme Court has, in its concern to enhance protection and enforcement of human rights, developed a highly advanced public law regime which goes far beyond many other democratic countries.

Other safeguards: quasi-institutional safeguards

10. To further strengthen and safeguard the exercise of basic human rights of the vulnerable sector of Indian society, additional mechanisms have been put in place. These include the National Commission for Women, the National Commission for Minorities, the National Commission for Scheduled Castes and Tribes and a National Commission for Human Rights. While the latter three are discussed in greater detail below, briefly it may be mentioned that the National Commission for Scheduled Castes and Tribes is a constitutional body while the other commissions are statutory bodies set up through legislation passed by the Indian Parliament. These commissions are charged with the responsibility of safeguarding the rights guaranteed to these sectors of society under the Constitution as well as under the various laws passed by the legislature. In investigating violations of these rights, suo moto or on complaint, these commissions have the powers of civil courts to summon and examine witnesses and documents. Their reports have to be tabled in Parliament for discussion. These mechanisms have served to safeguard the rights of the most vulnerable sectors of India, including women and children, through procedures that are open and transparent and which in turn make information easily accessible not only to decision makers but also to those likely to be affected and to the media.

11. Further guarantees of the rights and freedoms reflected in the Covenant and the Indian Constitution include an independent and vigilant print and electronic media, a well-informed public opinion and an active NGO movement. This has been buttressed by a policy of (a) transparency, responsiveness and cooperation with all United Nations mechanisms on human rights issues; (b) a continuing dialogue with NGOs, both domestic and international; (c) adherence to more than 16 major international human rights instruments including the Convention on the Rights of the Child, the Convention on Elimination of Discrimination against Women, etc., and regular fulfilment of reporting obligations. This has been dovetailed with a policy of regular systematic review with a view to strengthening existing safeguards for human rights, creating additional mechanisms where required (e.g. the establishment of vigilant National Commissions for Minorities, Women and Human Rights, which is discussed in detail below) and swift deterrent action against any sporadic and individual aberrations leading to human rights violations.

Holistic approach

12. While the Government of India has sought to ensure the observance, promotion and protection of human rights by putting in place an institutional framework and adequate safeguards, this has been paralleled by a perception that if the exercise of these rights by all its approximately 900 million citizens in equal measures is to be meaningful, this policy would need to be buttressed by a holistic approach which seeks to tackle poverty and underdevelopment, generate awareness and take affirmative action for the socially and economically vulnerable sections of society.

Poverty and underdevelopment

13. Detailed information on the Government's effort to give effect to economic and social rights and in tackling poverty and underdevelopment, which pose a grave impediment to the effective exercise and enjoyment of many rights, is, more appropriately, being provided in compliance with India's reporting obligations under the International Covenant on Economic, Social and Cultural Rights. Suffice it to briefly emphasize here that integral to the Indian Government's effort to reduce and remove such impediments/constraints in the exercise and enjoyment of human rights is an effort to eradicate poverty through a three-pronged strategy. This strategy takes as its objective:

(a) Economic growth and overall development including the recent policy of reform and liberalization;

(b) Human rights development, with an emphasis on health, education, minimum needs including protection of human rights and raising the economic and social status of vulnerable sections;

(c) Beneficiary-oriented programmes for poverty eradication through employment generation, asset endowment and training. Equally integral to this approach has been an emphasis on agricultural and rural development, food and nutrition, labour-intensive industrialization, literacy and education, and an emphasis on the socially and economically disadvantaged sectors of society, particularly women and children. The goal is essentially to improve the meaningful and equal access and availability of human rights to all citizens since many, though admittedly not all, rights have an economic basis. For example, the right of a child to protection against exploitation or the right to life is meaningless without adequate health facilities/infrastructure, etc.

Awareness generation

14. As part of its holistic approach, the Government of India has also sought to enhance awareness of the various human rights and freedoms available to its citizens under the Constitution and under the various international instruments, including the Covenant, to which it is an adherent. This awareness generation has taken many forms including dissemination of human rights and freedoms, including those reflected in the Covenant, through (a) translation; (b) media campaigns; (c) sensitization of the government machinery at all levels, including police, paramilitary forces and the armed forces, to the need to observe human rights; (d) introduction of human rights education in the educational system including at school and university levels. Recent illustrative rather than exhaustive examples would include the inclusion of human rights in the training schedule of the Sardar Vallabh Bhai Patel National Police Academy in Hyderabad or even the seminar organized under the auspices of the International Committee of the Red Cross on international humanitarian law for the paramilitary forces in Gwalior. In this effort, Government has worked closely with NGOs and the National Human Rights Commission. This is apart from the training modules adopted and vigorously pursued by various NGOs.

15. This policy has been further buttressed by a perception that awareness generation is to a large extent predicated on improving the levels of literacy and education which in turn are a priority area in India's overall development strategy. Article 41 of the Constitution lays down that the States shall make effective provision for education within the limits of its economic capacity and development, while article 45 directs that the State shall endeavour to provide free and compulsory education for all children until completion of the age of 14 years. In compliance with this, since independence, there has been considerable progress in the field of education, including a quantitative expansion of the education system to reach large sections of society. In recent years, there has also been a qualitative effort to restructure the educational system, to universalize it as well as to increase functional literacy both in terms of increasing levels of skill and employment and enhancing awareness of human rights, etc.

Affirmative action for socially and economically disadvantaged sectors

16. Integral to this holistic approach has been Governments's policy of affirmative action to create an effective environment for the exercise of human rights by certain vulnerable sectors of society who, as a result of socio-historical distortions, have been socially or economically disadvantaged. In institutional terms, the Constitution has prescribed specific affirmative measures, with the twofold objective of safeguarding the fundamental human rights of such vulnerable sectors of society, including removal of social disabilities and promoting their educational and economic interests. These measures include reservation of seats in the public services, administration, Parliament (Lower House) and State legislatures, and setting up of advisory councils and separate departments for the welfare of such socially and economically vulnerable groups. These groups have been identified in the relevant schedules of the Constitution and are designated as Scheduled Castes/Tribes. A National Commission for Scheduled Castes and Tribes serves to ensure observance of these measures and to monitor violations of these rights while a range of specific beneficiary-oriented schemes and plans have been put in place to ensure promotion of education and employment opportunities. These include the establishment of a National Scheduled Castes and Scheduled Tribes Finance and Development Corporation which takes up and finances viable schemes for economic development of these groups.

17. Similarly, affirmative measures are increasingly being taken for disadvantaged groups belonging to Other Socially and Educationally Backward Classes (OBCs). These measures include reservation of another 27 per cent in the administration for OBCs, while a National Backward Classes Finance Development Corporation has also been set up for granting concessional finance for upgrading technological and entrepreneurial skills and to serve as an apex body to monitor the work of similar corporations at the State level.

Creation of an environment conducive to enjoyment and exercise of human rights

18. In recent years, the phenomenon of terrorism, which is aided and abetted from across the border, has surfaced in certain parts of India, particularly Jammu and Kashmir and Punjab, and has taken a considerable toll of innocent civilian lives and has wrought large-scale destruction of property. The arbitrary and large-scale killing, rape, arson and destruction by terrorist

groups has led to an atmosphere of intimidation, fear and insecurity. The exercise and enjoyment of rights guaranteed to all other citizens, in other parts of India, have been seriously impaired for innocent Indian citizens, particularly in Jammu and Kashmir and Punjab. Increasingly, this phenomenon of terrorism has spread to other parts of India and the Bombay bomb blasts of March 1993 are a grave and telling example of both the wanton destruction and disregard for basic human rights, including the right to life, by such terrorist groups and their sponsors from across the border. The international community has increasingly recognized and articulated its condemnation of terrorism as a grave violation of human rights, which is reflected in the Vienna Declaration and Programme of Action and the resolutions adopted by the United Nations General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

19. Against this backdrop, the Government of India perceives a responsibility to create an environment conducive to the exercise and enjoyment of basic human rights including the right to life, the right to freedom of expression, etc. in these terrorist-infested areas, so that the vast majority of citizens in these areas can enjoy and access basic human rights in equal measure, comparable to their compatriots in other parts of India. An essential prerequisite for the creation and maintenance of an environment conducive to the exercise of human rights has to be a stable law and order environment where rule of law prevails and the various constitutional and other safeguards can be exercised and accessed freely. In this effort, the Government of India, like other Governments faced with similar situations including the United Kingdom, etc. had to enact "preventive legislation" such as TADA (Terrorist and Disruptive Activities) Act to control terrorism and create an environment based on security and law and order. This Act has since lapsed and has not been re-enacted. As a result of some of the measures taken by the Government terrorism, at least in Punjab, has come under control and the situation has reverted to normal. Indeed, once the environment conducive to the enjoyment of human rights was created, the Government of India immediately held elections and a popular representative Government is now functioning in that State.

Institutional developments since submission of India's second report

20. Since submission and consideration of India's second report under article 40 of the Covenant, the Government of India has taken several important measures to strengthen available safeguards for the observance, promotion and protection of human rights by regular monitoring, evaluation, transparency and channelling of complaints and allegations of human rights violations, through the establishment of institutional mechanisms. These measures include establishment of a National Commission for Women, a National Commission for Scheduled Castes and Tribes, a National Commission for Minorities and a National Human Rights Commission.

21. National Commission for Women. The proposal to establish a National Commission for Women had been under consideration in the Government of India for some time and in January 1992, a six-member statutory body was established with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided to ensure the exercise of human rights by women; to review the existing legislation and suggest amendments

wherever necessary and to look into complaints involving deprivation of violation of the human rights of women. To enable women to achieve equality in all spheres of life and exercise and enjoy the human rights guaranteed to them under the Constitution, the Commission has certain powers comparable to a civil court, including powers to investigate allegations of human rights violations both suo moto or which are brought to its attention by individuals, etc. The Commission has been quick to take appropriate action in various specific cases of violations of the rights of women. It has established expert groups to examine and make recommendations on changes necessary in legislation pertaining to issues such as child rape, women in custody, guardianship and maintenance. Its reports, along with the Action Taken Report of Government, must be tabled in Parliament, which in turn provides for discussion, dissemination and response, at the highest levels. Similar commissions are also being set up at the State level.

22. National Commission for Scheduled Castes and Tribes. The National Commission for Scheduled Castes and Tribes was established in March 1992 subsuming the functions of the Commissioner for Scheduled Castes and Tribes, provided for in article 338 of the Indian Constitution. This commission is a constitutional five-member body whose Chairman enjoys the rank of Cabinet Minister. This commission has the powers of a civil court in investigating violations of rights guaranteed to Scheduled Castes and Tribes. Its functions include regular monitoring of (a) the constitutional and legislative safeguards and provisions for ensuring exercise of basic human rights by Scheduled Castes and Tribes; (b) developmental measures undertaken by Government; (c) investigating allegations of human rights violations both suo moto or brought to its attention by individuals, etc.; (d) making recommendations for improvements both in institutional mechanisms and implementation. Its reports are tabled in the Parliament allowing for discussion and dissemination at the highest levels and it is mandatory for Government to table an Action Taken Report on the recommendations of the Commission.

23. National Commission for Minorities. Apart from the constitutional safeguards, substantive legislation and special programmes for protection of the rights of minorities, the Government of India had put in place a specific mechanism to evaluate the working of various constitutional safeguards for the protection of minorities and to make recommendations for effective implementation of such safeguards, i.e. the Minorities Commission. In 1992, this Commission was reconstituted as the National Commission for Minorities Act and came into effect on 17 May 1993. It comprises seven members, including the Chairman. Its functions include:

(a) Monitoring of constitutional and legislative safeguards;

(b) Making recommendations for effective implementation of these safeguards;

(c) Evaluating the progress of minorities;

(d) Investigation of specific complaints regarding violations of the rights of minorities including taking up of such complaints with the appropriate authorities.

24. The Commission has powers comparable to a civil court, particularly in investigating allegations of violations of the rights of minorities, and in this respect has been strengthened, for its precursor only had the function of investigating specific complaints regarding violation of the rights and safeguards provided for minorities, without the powers of a civil court. The reports of the Commission must be tabled in Parliament along with the Action Taken Report of Government, allowing for discussion, dissemination and transparency at the highest level.

25. National Human Rights Commission. In October 1993, a National Human Rights Commission (NHRC) was set up as a statutory body under the Protection of Human Rights Act 1993. The NHRC is a high-powered five-member body presided over by a retired Chief Justice of India and having as its members a retired woman Judge of the Supreme Court of India, two retired Chief Justices of High Courts and a former Under-Secretary-General of the United Nations. The members are irremovable during their term of office and enjoy the high rank accorded to Judges of the Supreme Court of India. It includes as ex officio members the Chairmen of the National Commission for Minorities, the National Commission for Scheduled Castes and Tribes and the National Commission for Women, and its powers and functions include:

(a) Inquiry into violations of human rights or their abetment;

(b) Visit to jails and other places of custodial detention under the supervision of Government;

(c) Review of constitutional and legislative safeguards for the protection of human rights to ensure their effective implementation;

(d) Undertaking of research in human rights;

(e) Review of factors, including terrorism, which inhibit the enjoyment of human rights;

(f) Recommendation of remedial measures; and

(g) Encouraging non-governmental organizations and institutions working for human rights.

26. The NHRC has the powers of a civil court to summon persons and record evidence and investigate, both suo moto and on individual complaint, violations of human rights. Every proceeding before the Commission is a judicial proceeding under the law. The Commission's annual report is required to be tabled in Parliament, along with a memorandum of action taken by the Government on the Commission's recommendations. Since its inception the Commission has done considerable work by way of investigation of allegations of human rights violations and examination and review of existing legislation, dissemination of human rights, particularly at school and university levels, and sensitizing police, paramilitary and armed forces to the need to observe the highest human rights norms, including inclusion of human rights education in the relevant training institutions.

27. Other important developments including, where relevant, Supreme Court judgements, are discussed in Part II of this report under the respective articles of the Covenant.

II. IMPLEMENTATION OF SPECIFIC ARTICLES OF THE CONVENTION

Article 1

28. Article 1 provides that all peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. The right of self-determination is one of the most controversial and uncertain topics in international law in modern times. After a period of considerable indeterminacy, it is now accepted that self-determination is a legal right but its lineaments remain uncertain. These uncertainties include the content of the right, the identity of the "people" who possess it and the nature of the "self" in question.

29. It is necessary to put the evolutionary background of the concept of self-determination into historical perspective. In the early years of the United Nations, the question of emancipation of colonial territories was very much before the General Assembly. India, as a founder member of the Non-aligned Movement, was at the forefront of the initiatives that led to the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples in December 1960. That Declaration contains enunciation of certain basic principles. Paragraph 1 declares, "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights ...". Consistent therewith, paragraph 2 provides "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Paragraph 6, however, clarifies - and this clarification is extremely important - that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

30. Even though a number of colonial territories had attained independence following the adoption of the Declaration, there still remained a number of cases where further efforts were needed to prevail upon colonial powers to speed up the process of decolonization. Thus, in 1966, when the International Covenant on Civil and Political Rights was adopted, the provision of article 2 of the Declaration was bodily lifted and incorporated in paragraph 1 of article 1 of the Covenant and all States parties, including the administering Power, were enjoined to promote realization of the objective of self-determination in that context.

31. India's declaration at the time of becoming party to the International Covenant on Civil and Political Rights was in accordance with this understanding of the historical background to the principle of self-determination. Given the historical background of the evolution of the concept of self-determination the Declaration was meant only to clarify an existing understanding and is not in any way a derogation from India's obligations under the Covenant.

32. It may be noted that the right to self-determination is said to have both internal and external aspects. As already pointed out above, it does appear that so far as external aspects are concerned, the context, background and the drafting history support the view that it was colonies (and trust territories) that were envisaged and not other peoples. The international community has throughout continued to affirm that the right of external self-determination does not extend to component parts or groups within independent sovereign States. The internal aspects of self-determination, it is suggested, includes the right of people to choose their own form of government and the right to democracy and they do not and cannot include the right of a fraction of the people to secede. Most States today comprise more than one ethnic group and if any such fraction had a right to secede, the international community as we know it would disintegrate. If attempts are made to promote a thesis favouring the break-up of States on grounds of ethnicity or religion, there would be, as cautioned by the United Nations Secretary-General in the "Agenda for Peace", "No limit to fragmentation and peace, security and economic well-being for all would become even more difficult to achieve." Indeed, this was reiterated conclusively and unambiguously in the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in 1993, which lays down in Part I, paragraph 2, that the right of self-determination "shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and the self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind". The Declaration on the occasion of the Fiftieth Anniversary of the United Nations also reiterates that the principle of self-determination is not to be construed as authorizing or encouraging any action that would dismember or impair totally or in part the territorial integrity or political unity of sovereign independent States.

Article 2

33. This article, by its very language, takes note of the position obtaining in several common law countries like India where treaties and conventions as such (by themselves) do not have the force of law save and except to the extent the provisions have been incorporated and made part of the law of the land. The provisions of this article accordingly enjoin States parties to take the necessary steps, in accordance with their constitutional processes, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant unless such rights have already been provided for in the existing legislative or other measures. It has already been stated in India's earlier reports that the civil and political rights recognized in the Covenant are adequately embodied in the Indian Constitution and other laws enacted even before the adoption of the Covenant. Such rights are guaranteed to all individuals within the territory of India without distinction of any kind. Indeed, article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws, whilst article 15 specifically provides that the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth, etc. The Constitution, however, also recognizes

the need to make special provisions for women and children, the advancement of any socially and educationally backward classes of citizens and for the Scheduled Castes and Scheduled Tribes.

34. Any legislative or executive action affecting the rights of individuals is subject to judicial review. Article 13 of the Constitution provides that any laws in force in the territory of India at the commencement of the Constitution, if they are inconsistent with fundamental rights enshrined in the Constitution, shall be void. That article also prohibits the State from making any law which takes away or abridges the rights recognized in the Constitution as fundamental rights which, by and large, include the various rights incorporated in the provisions of the Covenant. Any person who complains of his rights being violated by a provision of law may invoke the jurisdiction of the Supreme Court or a High Court for relief and the Court, if so satisfied, may strike down the law as being violative of the fundamental rights and as such void. The law as understood in the context includes not only legislative enactments but also customary law and various species of subordinate legislation such as order, by-law, rule, regulation or notification which have the force of law. Similarly, any executive action which may encroach upon an individual's fundamental human rights can be challenged before a court as being not authorized by law or in excess of the powers under law.

35. The right to move the Supreme Court for enforcement of this right is itself guaranteed in the Constitution as a fundamental right. Both the Supreme Court and the High Courts are empowered to issue any direction, order or writ including writ in the nature of habeas corpus, mandamus, certiorari, etc. to enforce an individual's fundamental human rights, and they can do so on the basis of even letters addressed to them. The superior courts of the country, namely the Supreme Court of India and the High Courts in the States, are independent of the executive and the legislative organs of the Government. The independence of judges is guaranteed in the Constitution through the manner of their appointment, the security of their tenure and the stringent provisions for their removal. The law declared by the Supreme Court is the law of the land and its decisions are binding on all courts and authorities. The decisions rendered by the Supreme Court are enforceable and all authorities, civil and judicial, are enjoined to act in aid of the Supreme Court by virtue of article 144 of the Constitution.

36. The Supreme Court and the High Courts are readily accessible to any person complaining of violation of his rights and to facilitate this process, the Supreme Court has evolved a procedure known as "Public Interest Litigation" under which any person, including third parties, can move the Court, even by means of a letter, in order to bring to the notice of the Court any cases of violation of human rights even though the applicant might himself not be affected. In addition to judicial remedies, a National Human Rights Commission has been established with powers to investigate situations where human rights are alleged to be violated and to recommend measures for redressal.

37. In the course of consideration of India's second periodic report, reference was made to the Armed Forces (Special Powers) Act and the Terrorist and Disruptive Security (Amendment) Act as being inconsistent with some of the

rights recognized in the Covenant. Briefly, it may be mentioned that these legislative measures have been enacted to meet certain special situations such as organized forms of terrorism and insurgency and are subject to adequate safeguards to ensure against violation of human rights. Each of these enactments has been adopted by both Houses of Parliament, composed of democratically elected representatives of the people on the basis of adult suffrage and is subject to judicial scrutiny at every stage. Indeed, each of these legislative enactments has been tested in the High Courts as well as in the Supreme Court. Moreover, the duration of these enactments is subject to legislative review and their continuance is considered in the light of the prevailing situation and public opinion. Indeed, the TADA Act, which was the subject of intense national debate, has lapsed on its expiry and has not been re-enacted. A more detailed discussion of these legislative enactments, their scope, safeguards, etc. has been attempted under paragraphs 49 to 56, 75 to 82 and 94. It may also be mentioned that in other democratic countries which are signatories to the Covenant, special legislative enactments have been made to deal with situations such as those arising out of terrorism. Illustrative examples include the United Kingdom Prevention of Terrorism (Temporary Powers) Act 1989 and measures introduced by France.

Article 3

38. As already indicated in India's earlier report, the Constitution of India ensures to women the right to equality (art. 14) and specifically prohibits discrimination on the basis of sex (art. 15 (1)). It provides for affirmative action and for positive discrimination by empowering the State to make special provisions for women (art. 15 (3)). Article 16 of the Constitution provides for equality of opportunity to all in matters relating to public employment or appointment to any office and specifically forbids discrimination, inter alia on the ground of sex.

39. Part IV of the Indian Constitution containing certain directives for the State enjoins the State to direct its policy towards securing the right to adequate means of livelihood for both men and women equally; equal pay for equal work for both men and women; that the health and strength of workers, men and women, are not abused and the citizens are not forced by economic necessity to enter vocations unsuited to their age and strength (art. 39 (a), (d), (f)). Further, a duty is cast on every citizen of India to renounce practices derogatory to the dignity of women (art. 51A (e)).

40. It may also be pointed out that in addition to the constitutional guarantees and directives, various legislations have been passed by the Government of India to tackle the root causes of many problems faced by women. The problems relating to child marriage, dowry, sati and property rights of women have been regulated by appropriate legislations, viz. the Child Marriage Restraint Act 1976; the Dowry Prohibition Act 1961; the Commission of Sati (Prevention) Act 1987; the Indian Succession Act 1925; and the Hindu Succession Act 1956.

41. In 1984, the Family Courts Act was passed with a view to promoting reconciliation among the parties and secure speedy settlements of disputes relating to marriage and family affairs.

42. In the field of labour law, various legislations provide for non-discrimination against women workers in matters of recruitment; equal pay for equal work; facility for crèches and maternity benefits. The Maternity Benefits Act was amended in 1988 with a view to providing the benefits of the Act to more women by expanding the scope of its application. The minimum days of employment to qualify for this benefit has also been reduced from 160 days to 80 days of actual work in the preceding 12 months.

43. Universal adult franchise forms the basis of Indian democracy and through this means the Government of India has sought to empower women by allowing them to participate equally in the political process of the country.

44. The Government of India recognizes the inadequacy of conventional paradigms which rely on a top-down system of delivery of programmes and services and has, therefore, taken steps to empower women by ensuring their direct participation at the grass-roots level. The Government of India, in a landmark amendment to the Constitution, has provided for 30 per cent of all elected offices in local bodies, whether in rural or urban areas, to be reserved for women. Once elections are held for all local bodies, it is estimated that over 800,000 women at the grass-roots level would enter public life. The local bodies have been made responsible for the planning and implementation of various development programmes. It is evident that participation by such a large number of women in decision-making at the grass-roots level would not only empower them but also help in effective identification and implementation of development programmes for women.

45. The judiciary in India has played a positive role in ensuring women's constitutional rights. The courts have struck down provisions which attempted to exclude married women from certain jobs (Air India v. Nergeesh Mirza, AIR 1981 SC 1829; Muthuamma v. Union of India, AIR 1979 SC 1868); enforced the principle of equal pay for equal work (Mackinon Mackenzie v. Audrey D'Costa (1987) 2 SCC 469); upheld the equal property rights of women (Mary Roy v. State of Kerala (1986) 2 SCC 209); and urged the Government to enact a uniform civil code so that the inequalities suffered by certain women under the personal laws are removed (Mudgal v. Union of India).

46. Legal aid services. Article 39 (a) of the Indian Constitution provides that the State shall secure that the legal system promotes justice on the basis of equal opportunity and shall in particular provide for free legal aid to ensure that the opportunities for securing justice are not denied to any citizens by reason of economy or other disparities.

47. Pursuant to this directive, a high-powered Committee for Implementing Legal Aid Schemes (CILAS) was set up by the Government of India under the chairmanship of Justice P.N. Bhagwati for providing legal aid and assistance to the poor and disadvantaged. CILAS set up committees at all levels in the State and in the Supreme Court and these committees are functioning and providing legal aid and advice. Judicial officers preside over the various committees. Necessary funding is provided by the Government of India. CILAS and the various committees also organize Lok Adalats, i.e., mediation agencies, in different places, urban as well as rural, for bringing about mediation in pending as well as apprehended disputes.

48. Every citizen whose income from all sources does not exceed 6,000 rupees per annum is eligible for free legal service. Legal aid is given for all or one or more of the following:

(a) Payment of court fees, process fees and all other charges payable or incurred in connection with any legal proceedings;

(b) Representations by a legal practitioner in legal proceedings;

(c) Obtaining and supplying all certified copies of judgements/orders and other documents in legal proceedings;

(d) Preparation of appeal papers, including printing and translation of documents, in legal proceedings.

Article 4

49. At the time India's second periodic report was considered, reference was made to legislation, such as the TADA Act (which has since lapsed on its expiry), the NSA (National Security Act) and the Armed Forces (Special Powers) Act, as being inconsistent with some of the rights recognized in the Covenant and therefore constituting derogations from India's commitment under the Covenant. While there was appreciation of the special circumstances that had necessitated such legislation, the Committee had sought clarification on why India had not sought to notify the Committee of these derogations, as stipulated in article 4 of the Covenant.

50. India has unfortunately experienced and continues to experience a sustained campaign of terrorism and violence aided and abetted from across the borders in different parts of the country over the last few decades. This has resulted in the killing of thousands of innocent civilians, the injuring and maiming of many more and displacement of a large segment of the population. In Jammu and Kashmir, this has led to the migration of over 250,000 from the minority community and 50,000 Muslims to other parts of India. Total casualties are in the range of 11,886 including 1,080 security personnel, 250 government officials, 9 political leaders, 62 politicians, 6 members of the judiciary plus 8 journalists. This extraordinary situation necessitated special statutes to combat terrorism and protect the life and property of ordinary citizens. It may be emphasized that such statutes were enacted by a democratically elected Parliament, their duration was subject to periodic review, and not only could their validity be tested by judicial review, but also any action taken thereunder could be challenged before the High Courts and the Supreme Court. It may also be mentioned that safeguards had been built into such legislation to ensure that fundamental human rights were not violated. These safeguards have been further strengthened as a result of judicial review. It may be emphasized that liberty cannot be suspended even during emergency. Moreover, if individual and isolated aberrations have occurred, there are judicial remedies available, including procedures for apprehension and punishment for such perpetrators of human rights violations.

51. It may also be pointed out that even in other democratic countries the need has been felt to take special measures to tackle the phenomenon of international terrorism. For example, in the United Kingdom a decision was

taken recently not to repeal the Prevention of Terrorism (Temporary Powers) Act 1989 which empowers the authorities to ban organizations and detain suspects for a period of seven days at a time without producing them in court. France also was compelled to assume special powers to deal with terrorist activities. Faced with situations of terrorism, India has enacted the following legislation:

(a) The Armed Forces (Special Powers) Act;

(b) The National Security (Amendment) Act;

(c) The Terrorist and Disruptive Practices (Prevention) Act (TADA) (which has now expired and has not been re-enacted).

52. In view of the queries raised during consideration of India's second periodic report, details of these legislative enactments, including available safeguards, are provided below and also in paragraphs 75 to 82 and 83. The Armed Forces (Special Powers) Act 1958 was enacted when India was faced with an acute law and order situation on account of activities of insurgents in the border areas in the eastern frontiers of India. Armed raids were being carried out by such insurgents in the small towns, villages and in the tea gardens followed by destruction of property, wanton killings, kidnapping and other acts of violence with the result that people in these areas were living under constant terror and were apprehensive about the safety of their lives and property. The army had to be called out to aid civil authorities for the apprehension of the offenders, who were usually armed, and to assist in the detection and search for the sources of weapons and ammunition supply. The territorial application of this legislation was therefore limited to certain border States and territories on the eastern frontier. Even though the legislation continues to remain on the statute books, its application is strictly confined, in conformity with the objectives of the legislation. The Act therefore provides that its provisions will only come into effect in such areas which are declared as "disturbed areas" by the Governor who is the highest civil authority and the constitutional head of the concerned Indian State. This provides a significant safeguard against any possible misuse of authority in invoking the powers under the Act by vesting the competence to declare an area as a "disturbed area" in the highest authority of the State. The propriety of and the bona fides of the exercise of the power in this regard is always subject to judicial review.

53. It would be apparent from a perusal of the provisions of the Act that special powers under this legislation can be exercised only in situations enumerated in the legislation, namely dispersal of unlawful assembly, preventing persons from carrying weapons, destruction of arms dumps, search and seizure, and effecting of arrest of persons suspected of commission of a cognizable offence. The Act, moreover, specifically provides that once a member of the armed forces has arrested any person and taken him into custody, the person must be handed over to the nearest police station, to ensure that the normal rights of an arrested person are made available to him in accordance with the provisions of the Constitution and the Criminal Procedure Code.

54. It would thus be clear that special powers conferred on the army officers were limited to the stage of making the arrest. Attention had been drawn in the course of discussion on the second report to section 6 of the Act which provides that no prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the central Government, against any person in respect of anything done or purported to be done under the Act. Such provisions exist in respect of all public officials, in order to avoid the possibility of harassment and vexatious civil or criminal proceedings which could hamper due discharge of their duties. This, however, does not confer immunity or impunity in cases where human rights are violated or the law of the land is breached. In fact, the central Government readily accords sanction for prosecution in all cases where it is satisfied that the grievance is justified.

55. The National Security (Amendment) Act 1987 incorporates certain amendments to the National Security Act of 1980 in its application to the State of Punjab and the Union Territory of Chandigarh. The National Security Act empowers the central Government as well as a State government to detain any person under the Act where the Government is satisfied that it is necessary so as to prevent him from acting in any manner prejudicial to the defence of India, the security of India, maintenance of public order, maintenance of supplies and services essential to the community and in certain other limited cases. This legislation conforms to the provisions of article 22, clauses 3 to 5, of the Constitution in that the Act provides, in section 5, that the authority making the order of preventive detention shall, as soon as may be possible, but ordinarily not later than 5 days, and in no case more than 10 days, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. Section 9 of the Act provides for the constitution of Advisory Boards consisting of three persons who are or have been judges of a High Court or are qualified for appointment to such office. The representation of the person detained has to be placed before the Board within a period of three weeks form the date of detention. The Board is required to give the person detained an opportunity of a personal hearing if he so desires or whenever the Board considers it necessary so to do. The Board thereafter makes its report on the question of whether or not there is sufficient cause for detention. The person detained has to be released if the Board is of the view that there is no sufficient cause. In cases where the Board recommends continuation of the detention he can be detained for a maximum period of 12 months. The Amendment Act of 1987 makes a special provision specifying the circumstances in which a person may be detained for a period longer than three months but not exceeding six months, without obtaining the opinion of the Advisory Board. The courts have upheld the constitutional validity of this special provision holding that the said provision did not violate the provision of equal protection of the laws enshrined in article 14 of the Constitution, as the same could be justified on the basis of geographical classification in view of the serious situation created by terrorism, prevalent in the State of Punjab at the time. It may be pointed out that this doctrine of classification has also been accepted in the constitutional law of the United States of America as interpreted by the United States Supreme Court in relation to the fourteenth amendment to the United States Constitution. Apart from the fact that the National Security Act of 1980 and the Amendment Act of 1987 fully conform to the provisions of

the Constitution, the Act and its amendment fully protect the rights of a person preventively detained, by informing him of the ground of detention within five days and providing him with the opportunity to make a representation and of being heard before a tribunal consisting of persons of the status of judges of a High Court.

56. The Terrorist and Disruptive Activities (Prevention) Act, 1987 was enacted by way of a special measure for the prevention of and for coping with terrorist and disruptive activities. Though the TADA Act has lapsed and is no longer applicable, the report proposes to deal in detail with its provisions since it was in operation for a part of the period for which this report is being made and several questions were put by various members of the Committee in the course of discussion of the second report. Consequently, the TADA Act has been discussed in detail under article 9 and under article 14 of this Report.

Article 6

57. There is no change from the earlier reports on article 6 whose provisions are adequately covered by Indian laws with article 21 of the Indian Constitution being the touchstone of the right to life. The Supreme Court of India has, over a period of time, given liberal interpretation to the right to life of which a person cannot be deprived except according to procedure established by law, which procedure has to be reasonable, fair and just; the Supreme Court and the High Courts are the final arbiters of what is a reasonable, fair and just procedure. The death penalty has been retained in the Indian statutes, largely in view of its deterrent value, but it is only invoked in exceptional cases, for certain specific heinous crimes, and there are a range of safeguards with provisions for appeals for clemency at every stage.

58. The constitutional prescription contained in article 21 against deprivation of life or personal liberty except according to procedure established by law extends to "all persons" and not merely to citizens. In each case where an individual is faced with deprivation of his life, the court, in the exercise of its constitutional power of judicial review, has to decide whether there is a law authorizing such deprivation and whether, in the given case, the procedure prescribed by such law is reasonable, fair and just, and not arbitrary, whimsical and fanciful.

59. The right to life has been interpreted very widely by the courts so as to encompass the right to live with human dignity and to include all those aspects of life which go to make a man's life meaningful, complete and worth living.

60. India has not abolished the death penalty, but as laid down by the Supreme Court, it is to be awarded by the competent courts only in the rarest of rare cases, in which the crime committed is so heinous as to shock the conscience of the society. Under the present criminal law, imposition of a death sentence is an exception rather than the rule. Even in those exceptional cases, special reasons have to be given in justification of the imposition of the death penalty. The Criminal Procedure Code requires the High Court to postpone the execution of a death sentence on pregnant women and

may, if it thinks fit, commute the sentence to imprisonment for life. Under the Juvenile Justice Act, 1986, a sentence of death or imprisonment cannot be imposed on delinquent juveniles.

61. An important development in the law relating to the death penalty since the last report is that inordinate delay in execution of the death sentence has been held by the Supreme Court to be violative of article 21 which would entitle the convict to get his sentence converted to life imprisonment (Daya Singh v. Union of India, AIR 1991 SC 1548).

62. It may be recalled that the President of India in all cases, and the governors of States under their respective jurisdictions, have power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. The power to suspend, remit or commute the sentence of any convicted person also vests with the appropriate State Government or the central Government. However, in case of death sentence, the powers vested in the State Government can also be exercised by the central Government.

Article 7

63. The requirements of article 7 of the Covenant are met sufficiently in the Indian legal system. In addition to the constitutional prescriptions, various sections of the Indian Penal Code prohibit infliction of hurt, grievous hurt or bodily harm or injury especially to extract any confessions from any person. The Mental Health Act, 1987 prohibits any medical or scientific experimentation without the informed consent of the persons involved. In other cases there are elaborate guidelines in the respective professions against involuntary medical or scientific experimentation.

64. The Indian Constitution and the laws made thereunder have elaborate and stringent provisions to safeguard the fundamental rights of all individuals and every contravention is subject to judicial remedies. Any person subjected to torture or to cruel, inhuman or degrading treatment or punishment can move the higher courts for various judicial remedies under the law, under articles 32 and 226 of the Constitution. Apart from this, the laws make full and adequate provisions against torture whether by an individual or law enforcement agencies.

65. To further safeguard against the use of torture in custody there are a range of legal provisions which are given below:

(a) Section 54 of the Criminal Procedure Code confers upon an arrested person the right to have himself medically examined. Such a request can be addressed to the magistrate;

(b) A further safeguard is that a confession made to a police officer is not admissible in evidence (sects. 25 and 26 of the Indian Evidence Act);

(c) Section 162 of the Criminal Procedure Code also provides that no statement of a witness recorded by a police officer can be used for any purpose other than that of contradicting his statement before the court. This section also forbids the police officer to obtain the signature of a person on the statement made by him;

(d) The Indian Evidence Act (sect. 24) also provides that when admissible, confession must be made voluntarily. If it is made under any inducement, threat or promise, it is inadmissible in criminal proceedings;

(e) An additional safeguard is that under section 164 of the Criminal Procedure Code, it is for the magistrate to ensure that confession or a statement being made by an accused person is voluntary.

66. There are also a range of penalties prescribed for offences which may amount to torture or cruel, inhuman or degrading treatment. Section 330 of the Penal Code prohibits causing hurt to extort confession or information to compel restoration of property. Under section 331, whoever voluntarily causes grievous hurt for the purpose of extorting any confession or any information which may lead to the detection of an offence, or for the purpose of compelling or causing the restoration of any property, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to a fine.

67. When the liberty and dignity of an individual are encroached upon by inhuman or degrading treatment, remedies are also available under articles 32 and 226 of the Constitution.

68. It was also mentioned in India's second report that the question of cruelty to prisoners is dealt with by the Prisons Act, 1899. If any excesses are committed on a prisoner, the prison administration is held responsible for them. Under section 176 of the Criminal Procedure Code, 1973, an inquiry by a magistrate is compulsory where the death of a person occurs in police custody. Since the last report, it may be noted that the Indian courts have awarded compensation for custodial violence or death in certain cases (see Nilabeti Behara v. State of Orissa, W.P. Cri. No. 488 of 1988) and suggested detailed measures to the State Government to prevent, check and monitor custodial violence (see Calcutta High Court in M.P. Chakraborty, P.K. Dube v. State of West Bengal C.O. No. 374 (W) of 1989). The National Human Rights Commission has further instructed that all instances of custodial death, rape, etc., be brought to its notice within 24 hours of occurrence. These cases are investigated and remedial measures prescribed.

Article 8

69. Adequate legal mechanisms and machinery exist in India to meet the requirements of article 8 of the Covenant. There have been no changes in the legal framework on abolition of bonded or forced labour in India since the last report, since existing legislation has served to tackle the situation. To ensure that existing legislation is effectively implemented, the central Government has continued to advise the State Governments to conduct periodic

surveys for the identification of bonded labourers and to take steps for their release and rehabilitation. In April 1993, it was decided that a fresh survey of bonded labour should be carried out in 12 States.

70. Certain additional measures have been taken by Government to tackle the phenomenon of bonded labour. In 1978/79, the central Government launched a scheme under which State Governments have provided financial assistance to each bonded labourer. Such assistance can take one of three forms: land based, non-land based or skill/craft based. A scheme entitled "Grants-in-aid to voluntary agencies for the identification and rehabilitation of bonded labourers" also provides for a managerial subsidy. In addition, they are also paid a certain sum for each release order in excess of 20 bonded labourers released in a year subject to the condition that the total amount of subsidy and the amount of release order will not exceed 10,000 rupees in a year. An outlay of 10 million rupees has been earmarked for this in the VIIIth Five Year Plan (1992-1997).

71. To ensure effective release and rehabilitation of the bonded labourers, the States have also been advised to integrate the scheme for this purpose into the various anti-poverty programmes which are being implemented. In the activities initiated under the Special Components Plan for Scheduled Castes and Scheduled Tribes, there exist arrangements for allotment of surplus agricultural land to the bonded labourers.

72. For proper enforcement of the Bonded Labour System (Abolition) Act, 1976, vigilance committees have been set up in subdivisions of States where bonded labour has come to light. These committees meet periodically to review the work being done. They have social workers as well as non-officials as members. Voluntary agencies are also involved in the identification and rehabilitation of bonded labourers.

73. As per reports received from State Governments, the total number of bonded labourers identified and freed was 256,000, of whom 223,000 have been rehabilitated. Identification of bonded labourers and their release and rehabilitation is a continuous process where the Government's efforts are being supported by various voluntary agencies and prominent citizens.

Article 9

74. Liberty is one of the pillars on which the Indian democracy rests, as enshrined in the preamble to the Indian Constitution itself. As has been reported earlier, all the prescriptions of article 9 of the Covenant are enshrined in the Indian Constitution and are observed in India in accordance with the Constitution. However, at the time of India's accession to the Covenant, India declared that under the Indian legal system there was no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State. It may, however, be mentioned that while there is no statutory right to compensation, in several cases the judiciary has upheld this right and in these cases, the State has paid compensation.

75. During the consideration of India's second periodic report, certain members of the Committee had sought clarifications on different provisions of the Terrorist and Disruptive Practices (Prevention) Act, which has since expired. However, since this Act was in force during the period under

consideration, it may be mentioned that it was subject to judicial review by the Supreme Court in the case of Kartar Singh v. State of Punjab [JJ 1994 (2) SC 423-564] where a Constitution Bench of the Supreme Court examined the various provisions of the TADA Act. While the Supreme Court upheld the constitutional validity of the Act in view of the special circumstances of terrorism and insurgency that necessitated such an Act, it struck down certain provisions and prescribed additional safeguards to further ensure availability of the fundamental human rights guaranteed in the Constitution.

76. The Supreme Court took cognizance of the special measures necessitated by terrorism:

> "In spite of the drastic actions taken and intense vigilance activized, the terrorists and militants do not desist from triggering lawlessness if it suits their purpose. In short, they are waging a domestic war against the sovereignty of their respective nations or against a race or community in order to create an embryonic imbalance and nervous disorder in the society either on being stimulated or instigated by the national, transnational or international hard-core criminals or secessionists, etc. Resultantly, the security and integrity of the countries concerned are at peril and the law and order in many countries is disrupted ... Therefore, every country has now felt the need to strengthen vigilance against the spurt in the illegal and criminal activities of the militants and terrorists so that the danger to its sovereignty is averted and the community is protected."

77. The Court agreed that there were

> "Compelling reasons as shown in the Statement of Objects and Reasons for enactment of Acts of 1985 and 1987 which are to the effect that terrorists and disruptionists by their expanded activities have created dreadful fear and panic in the minds of the citizens and disrupted communal peace and harmony; that their activities are on an escalation in many parts of the country, that it has been felt that in order to combat and cope with such activities effectively, it had become necessary to take appropriate legal steps effectively and expeditiously so that the alarming increase of these activities which are a matter of serious concern, could be prevented and seriously dealt with."

78. The Court further noted that

> "It was only in the above prevailing circumstances [that] the legislature has been compelled to bring forth these Acts (TADA) to prevent and deal with the peril of the erupting terrorism and the consequent potential disorder among others disrupting the law and order and to sternly deal with many groups lurking beneath the murky surface, aiding, abetting, nourishing and fomenting terrorism besides giving financial support and supplying sophisticated automatic legal arms and ammunitions both from inside and outside of India."

79. In view of this background, the Supreme Court examined the various provisions of the TADA Act and, while upholding many of its features, struck down some and prescribed additional safeguards. These are summarized below:

(a) The section of the Act (15) which provided that a confession made by a person before a police officer (not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes, soundtracks) shall be admissible in the trial of such person or co-accused abetter or conspirator for an offence under the Act or rules made thereunder, was upheld, but additional safeguards were prescribed:

(i) That the confession obtained in the pre-indictment interrogation by a police officer, not lower in rank than a Superintendent of Police, should be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him;

(ii) The person from whom a confession has been recorded under section 15 (1) of the Act should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under rule 15 (5) along with the original statement of confession, written or recorded on mechanical device, without unreasonable delay;

(iii) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused and get his signature and, in case of any complaint of torture, the person should be directed to be produced for medical examination before a medical officer not lower in rank than an Assistant Civil Surgeon;

(iv) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the metropolitan cities and elsewhere of a Deputy Superintendent of Police or a police officer of equivalent rank should investigate any offence punishable under the Act of 1987;

(v) The police officer, if he is seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody, must file an affidavit sworn by him explaining the reasons not only for such custody but also for the delay, if any, in seeking the police custody;

(vi) In case the person taken for interrogation, on receipt of the statutory warning that he was not bound to make a confession and that if he did so the said statement may be used against him as evidence, asserted his right to silence, the police officer must respect his right of assertion without making any compulsion to give a statement of disclosure. The court directed the central Government to take note of the above-mentioned guidelines and incorporate them by appropriate amendments in the Act and the Rules;

(b) The Supreme Court also urged the court trying the offences under the Act to examine the admissibility or reliability of a confession, to ensure that there was no coercion, etc. in seeking of evidence during custodial interrogation;

(c) In order to ensure a higher level of scrutiny and applicability of the TADA Act, the Supreme Court was of the view that there must be a screening committee or a review committee constituted by the central Government consisting of the Home Secretary, the Law Secretary and other concerned secretaries of the various departments to review all the TADA Act cases instituted by the central Government as well as to have a quarterly administrative review of the States' action in the application of the TADA Act provisions in the respective States, and the incidental questions arising in relation thereto. Similarly, there must be a screening or review committee at the State level constituted by the respective States consisting of the Chief Secretary, Home Secretary, Law Secretary, Director-General of Police (Law and Order) and other officials as the respective Government may think it fit, to review the action of the enforcing authorities under the Act and screen the cases registered under the provisions of the Act and decide on the further course of action in every matter;

(d) On section 16 (2) and (3) of the TADA Act, which provided for withholding of identity of witnesses, the Supreme Court held that in order to ensure the purpose and object of cross-examination the identity, names and addresses of the witnesses may be disclosed before the trial commences but subject to an exception that the court, for weighty reasons in its wisdom, may decide not to disclose the identity and addresses of the witnesses, especially of potential witnesses, whose life may be in danger;

(e) The Supreme Court, however, struck down section 22 of the TADA Act, which provided for identification of the accused on the basis of a photograph, as being opposed to the fair and reasonable procedure enshrined in article 21 of the Constitution. The Court agreed that it is quite impossible to identify any person on the basis of a photograph, especially in the present day when trick photographs are being taken;

(f) Further, the Supreme Court reduced the period for which an accused can be kept in custody pending investigation from 1 year to 180 days under the TADA (Amendment) Act 1993. The Supreme Court in another case held that an indefeasible right to bail accrues in favour of the accused if the police fail to complete the investigation and put up a charge-sheet against him within 180 days in accordance with law. Further remand after the expiry of the above-mentioned period, may be granted by the court only on a report of the public prosecutor and not at the request of the investigating agencies;

(g) The Court also indicated that all investigations must be completed with utmost promptitude but where it becomes necessary to seek more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor and must satisfy him about the progress of the investigation and furnish reasons for seeking further custody

of an accused. Thus, for seeking extension of time, the public prosecutor was required to make a report to the designated court after independent application of his mind to the request of the investigating agency (Hitendra Thakur v. State of Maharashtra, (1994) 3 Scale 105).

80. Further, in another case, the Supreme Court held that the possession of arms in a notified area under the Act did not raise an irrebuttable presumption of guilt of the accused. The accused had a right to prove that the arms in his possession were not intended to be used for terrorist or disruptive activities. In a unanimous judgement, the Court ruled that the accused was entitled to prove by adducing evidence that the reason for his unauthorized possession of arms in a notified area were wholly unrelated to any terrorist activity and that the arms as such have not been used for such activities. If he succeeded in proving this, then the offence was punishable under the general law, e.g. the Arms Act, and not under TADA (Sanjay Dutt v. State of Maharashtra, JTI 1994 (5) SC 540).

81. There were certain reports of misuse of the TADA Act. The Government took serious note of these instances and directed the State Governments to review all the cases registered under the TADA Act in the respective states and to use the TADA Act with greater circumspection. The above judgement and the amendments introduced to the TADA Act in 1993 indicate sincere attempts by the Government and the judiciary in India to strike a pragmatic balance between the interests of the nation confronted with the grave menace of terrorism and the fundamental rights of an accused in a criminal trial.

82. The TADA Act had been the subject of continuing national debate and in view of the reservations expressed by certain sections of society, the Act has been allowed to lapse on its expiry.

Article 10

83. Article 10 (1) provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

84. Even if prisoners are not in a position to enjoy the full protection of fundamental rights due to the very fact of their imprisonment, it does not reduce them to non-persons. The Supreme Court has held that a person detained lawfully by the police was entitled to be treated with dignity and could not be tortured or beaten up (Sanjay Suri v. Delhi Administration, AIR 1988 SC 414). Prison and police authorities have to safeguard the rights of prisoners in jails. Handcuffing of under-trial prisoners without adequate reasons in writing has been found to be contrary to article 21 and the nature of the accusation has been held to be no criterion for handcuffing or fettering of the accused unless there is no other practical way of preventing escape; in a given case and circumstances handcuffing is not permissible (Prem Shanker v. Delhi Administration, AIR 1980 SC 1535).

85. Indian law and the justice system provide for separation of adults from juveniles for purposes of detention and treatment. The Juvenile Justice Act dealing with this subject lays down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances

is lodged in jail or a police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts. It also establishes norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation.

86. The Supreme Court has played an active role in matters pertaining to juvenile delinquents. It directed the district judges of the entire country in 1986 to send the particulars of under-trial and convicted children found in regular jails within their respective jurisdiction and had further directed to transfer them to appropriate institutions, where they exist, and where such institutions have not been established, the juveniles should be segregated from adult prisoners. On the basis of the responses received and taking into consideration the Juvenile Justice Act, the Supreme Court again directed the district judges in 1988 to update the figures so as to ascertain the exact number of delinquent juveniles in regular jails. The Court felt that, in the best interests of the children, at the initial stage the matter required overseeing by the Court for coordination between the Union Government and the State Governments, and between authorities within the State, and when the machinery is properly geared the responsibility of overseeing may be entrusted to the High Courts. The Supreme Court also established a committee of lawyers to evolve a scheme for making overseeing convenient.

Article 11

87. This article is observed in India and is provided for in Indian laws, as reported in the previous report. There is no specific information or difficulty faced in implementation of this provision since the submission of the last report.

Article 12

88. By virtue of articles 19 and 21 of the Indian Constitution and certain Supreme Court decisions, everyone in India has the right to liberty of movement, freedom of residence and the right to go abroad, but these individual freedoms are subject to reasonable restrictions in the interest of the general public or for the protection of any Scheduled Tribe. The purpose of such reasonable restrictions is only to safeguard enjoyment of basic rights and not to interfere with them.

Article 13

89. From time immemorial, India has been the destination for peoples from far and near seeking prosperity or peace. In present times, too, increasing numbers of foreign tourists, students and businessmen freely visit and enjoy their stay in India.

90. In accordance with the provisions of article 13 of the Covenant and the declarations made by India in this respect at the time of its accession, aliens in India are not expelled except for reasons of national security in accordance with the Foreigners Act.

91. Since the last report, an increasing number of refugees from bordering countries are voluntarily returning to their homelands in conditions of safety in accordance with the agreements reached.

Article 14

92. The substantive and procedural prescriptions of the principle of equality before the law and equal protection of laws enshrined in article 14 of the Covenant are reflected adequately in the Indian legal system and there is no change in the legal position in this respect since the last report.

93. However, some important recent judicial pronouncements given below are worth noting:

(a) Failure to inform the accused of the grounds of his arrest in a language which he understands has been held to be violative of this constitutional guarantee;

(b) It is the duty of the magistrate to tell the accused that he is entitled to legal aid and it cannot be said that legal aid has to be made available only at the request of the accused;

(c) Since the submission of the last report, the Supreme Court of India has further clarified that the right to speedy trial and the right to legal aid services were implicit in the broad sweep and content of article 21 and that the right to speedy trial encompasses all stages, namely investigation, inquiry, trial, appeal, revision and retrial (A.R. Antulay v. R.S. Nayak, AIR 1992 SC 1701);

(d) In cases of unusual delay, persons awaiting trial for long periods can approach the Supreme Court which will give the necessary directions in the matter and can grant relief, keeping in view all the relevant factors.

94. As regards the TADA Act, certain specific queries were raised by some members of the Committee while considering India's last report. While the Act has lapsed, clarification of these queries is included below for the information of the Committee.

(a) The power of the central Government or a State Government to constitute one or more designated courts for a given area or case, by notification in the Official Gazette, is in accord with article 14 (1) of the Covenant which requires that tribunals should be established by law, because the TADA Act was a valid law duly enacted by Parliament and a provision had been made in section 9 of the Act for setting up of designated courts for the trial of offenders under the TADA Act;

(b) Regarding the question of the compatibility of section 16 (1) of the Act with the Covenant, while public trial was a rule, in certain cases, in the interest of the public, trials could lawfully be held in camera. It is well known that proceedings in rape cases, matrimonial cases, and cases involving juveniles, are held in camera; similarly, in cases involving terrorism and terrorist violence the safety and security of witnesses is paramount and they have to be protected from any reprisals and attacks by

terrorist groups. Hence, the Act originally made provision for the public prosecutor to request the court to hold proceedings in open court. But, by a subsequent amendment to section 16 (1) of the Act, it was at the discretion of the court whether in a given case proceedings were to be held in camera. This was fully in line with the position under article 14, paragraph 1, of the Covenant;

(c) Regarding admissibility of confessions made by a person before a police officer, the TADA Act did not violate any prescription of article 14 of the Covenant. There were several restrictions laid down in section 15 of the Act, such as that the admission should be made before a senior public officer not below the rank of Superintendent of Police, and recorded by such police officer in writing. The Supreme Court of India in a case examined the legality of this provision and upheld it but laid down several safeguards including the safeguard that such confessions recorded by the police officer must be either in writing by the accused or recorded in a language known to the accused and then submitted to the magistrate. It is the practice in many legal systems to admit such confessions. The essential safeguard lies in section 24 of the Evidence Act, which has already been referred to earlier. This provision could, therefore, hardly be held to contravene the provisions of the Covenant;

(d) As regards shifting the burden of proof to the accused, section 21 of the TADA Act enumerated the special circumstances under which it could be done. It was restricted to circumstances where either certain arms or explosives were recovered from the possession of the accused and there was reason to believe that similar arms and explosives were in fact used in the commission of an offence, or the evidence of an expert indicated that fingerprints of the accused were found at the site of the offence or on anything used in connection with the commission of the offence, or it was proved that an abetter rendered any financial assistance to a person accused of an offence. Thus, it can be observed that the provision came into play when substantial evidence was available which legitimately required clarification and explanation which could only be in the possession of the accused. To amplify:

(i) This position was clarified in a judgement under section 5 of the TADA Act which made it punishable to possess unauthorized arms in a notified area - an area more prone to terrorist and disruptive activities (Sanjay Dutt v. The State JT 1994 (5) SC 540);

(ii) The Supreme Court held that the accused was entitled to rebut the above statutory presumption and prove that his unauthorized possession of any such arms and ammunition, etc. was wholly unrelated to any terrorist or disruptive activity and the same was neither used nor available in that area for any such use. If the accused was able to prove this then he could not be convicted under section 5 of the TADA Act;

(iii) It is a settled rule of criminal jurisprudence that the burden on an accused of proving a fact or rebutting a statutory presumption in his defence is not as heavy as on

the prosecution to prove its case beyond reasonable doubt, but it is a lighter burden of greater probability. Thus, the burden on the accused of rebutting the statutory presumption which arose against him under section 5 of the TADA Act on proof by the prosecution that the accused was in unauthorized possession of any of the specified arms and ammunition within a notified area is of greater probability;

(iv) The practical considerations in prosecution for an offence punishable under section 5 of the TADA Act affecting the burden of proof indicated that the intended use by the accused of such a weapon of which he was in unauthorized possession within a notified area was known only to him and the prosecution would be unable most often to prove the same while the accused could easily prove his intention;

(e) Further, to minimize the possibility of the misuse of the TADA Act an amendment was made to the Act by the TADA (Amendment) Act, 1993 whereby a case could be registered under the Act only if the Superintendent of Police authorized it, and prosecution could be launched only with the approval of the Inspector General of Police, who is one of the top persons in the police hierarchy in the country.

Article 15

95. As has been stated in the previous reports, this provision is fully observed in India. The Constitution prohibits the enactment of any ex post facto criminal law and provides that no one shall be punished for an act which was not an offence under the law in force when it was committed. It also provides that no one shall be subjected to a greater penalty for an offence than what was provided under the law in force when the offence was committed.

Articles 16 and 26

96. The requirements of these articles are fully met in India. Every person has a right to recognition as such and article 14 of the Constitution specifically guarantees to every person the right of equality before the law and equal protection of the law. Article 15 of the Constitution prohibits discrimination on the grounds only of religion, race, sex, caste, place of birth or any of them.

Article 17

97. The right of privacy is guaranteed by Indian laws. Unlawful attacks on the honour and reputation of a person can invite an action in tort and/or criminal law. The Supreme Court has held recently that any information which required disclosure of private matters of a woman's life cannot be asked for. Such probes into personal matters constitute violation of the right to privacy which is a part of the right to personal liberty (Neera Mathur v. LIC AIR 1992 SC 392).

Article 18

98. India is not a theocratic State based on any particular religion, although through the millennia of history it has been a home of several religions, in particular Hinduism, Buddhism, Islam, Christianity, Zoroastrianism, Jainism and Sikhism. After independence, the Republic of India chose to be a secular State. Accordingly, article 25 of the Constitution of India lays down the right to freedom of religion. All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion subject only to public order, morality, health and such other provisions as laid down in the Constitution itself. The Supreme Court of India has upheld the religious belief of the Jehovah's Witnesses not to sing the national anthem (Bijoe Emanuel v. State of Kerala AIR 1987 SC 748). Every religious denomination or any section thereof enjoys the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion (art. 26). Religious denominations can also own and acquire moveable and immoveable property and to administer such property in accordance with the law.

99. However, as stipulated in the Covenant, the Constitution of India does not permit any compulsion in religious matters. Accordingly, "No person can be compelled to pay any tax the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination". It is not a permitted policy under the Constitution to pay out of public funds any money for the promotion or maintenance of any particular religion or religious denomination. Article 28 provides that no religious instruction can be provided in any educational institute which is wholly maintained out of State funds.

100. In order to redress violations of protection of religion, the Indian Penal Code contains offences relating to religion and prescribes punishment for offences such as injuring or defiling a place of worship with the intention to insult the religion of any class, committing a deliberate and malicious act designed to outrage the religious feeling of any class by insulting its religion or religious beliefs, disturbing religious assemblies and making utterances which wound the religious feelings of others.

Article 19

101. As a democracy, India attaches importance to freedom of speech and expression and also believes that a free press and informed public opinion are the best guarantees of human rights in the pluralist democracy of India. India proudly enjoys an active and free press and everyone has the right to express their convictions and opinions freely by word of mouth, writing, printing, through pictures or any other mode. The press has the right of free propagation and free circulation without any previous restraint. Any law which lays down prohibitive burdens on the press that would restrict the circulation, penalize its freedom of choice as to personnel, prevent newspapers from being started and compel the press to seek government aid would be violative of article 19 (1) (a) of the Indian Constitution.

102. The Covenant in article 19 (3) provides for restrictions on this right. In India, reasonable restrictions can be imposed on freedom of speech by law in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Accordingly, at the time of its accession to the Covenant, India explained its position that this provision should be applied in India in conformity with article 19 of the Indian Constitution. Since the consideration of the last report, there has been no change in India's position in the application of this article in India.

Article 20

103. It is a constitutional directive in India for the State to promote international peace and security, and maintain just and honourable relations between nations. Not only is war propaganda not permissible but also the State can impose restrictions on the freedom of speech and expression in the interests of friendly relations with foreign States under the Indian Constitution.

104. Racial discrimination is contrary to the tenets of Indian society and the Indian Constitution expressly prohibits discrimination on grounds of race. Internationally, India remains a State party to the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid. These conventions are enforced in India and necessary reporting is made to the United Nations. The Indian Parliament has also passed the Anti-apartheid Act to give force to the relevant convention in the territory of India.

Article 21

105. The right to peaceful assembly is a fundamental right under the Indian Constitution. There is no change in the legal or administrative system applicable to the right to peaceful assembly since the last report.

Article 22

106. As stated in the earlier report, the right to freedom of association is guaranteed in India subject only to such restrictions as are envisaged in paragraph 2 of article 22 of the Covenant which are necessary in a democratic society. More specifically, the right to form and join trade unions is covered by the Trade Unions Act 1926 which lays down the law relating to registered trade unions. India is also an active State member of the International Labour Organization and has accepted or become a party to several international instruments of the ILO.

107. As of 1988, there were about 47,000 registered trade unions which submitted returns reflecting a membership of about 6 million. Cotton textiles, food, petroleum, coal projects, mining machinery and equipment, electricity, transport, communication and services were amongst the industries which reflected a high degree of unionization of workers.

Article 23

108. The joint family system has been the mainstay of Indian society. Although in the recent period a distinct trend towards nuclear families is emerging, with women increasingly joining the work force and very little availability of child care facilities, the need for the joint family system is again being felt. The family, however, continues to remain the fundamental unit of Indian society with each member having rights and obligations towards each other. The provisions relating to maintenance of destitute spouse, children and parents not only form part of the personal laws but are also provided for in the Criminal Procedure Code which provides for a summary remedy to save the dependents from destitution.

109. The right to marry and form a family is recognized under the relevant personal laws of the communities. The minimum age of marriage has been laid down in the Child Marriage Restraint Act as 18 years for girls and 21 years for boys. Child marriages, that is, marriage of children below the prescribed age, are unlawful. Yet, such marriages are known to take place in rural areas of the country. The Government has been making considerable efforts through the media and rural and women's upliftment programmes to educate people about the evils of child marriage, in particular the adverse affects it has on the physical and mental health of women. Noting that high female literacy rates are associated with higher age of marriage, low rates of population growth as well as infant mortality and maternal mortality, besides a higher rate of life expectancy, planned expenditure allocation focuses on girls' and women's literacy. It has a beneficial impact on children's literacy and other national objectives like population control and family welfare.

110. The rights and responsibilities of spouses as to marriage, during marriage, at its dissolution and as to children are all governed by the respective personal laws. The laws applicable to Hindus have been codified to a large extent to ensure equality for women and remove all legal disabilities from which they suffer. A series of legislation was passed introducing monogamy, inter-spousal obligation to provide maintenance, requiring the consent of the wife for the adoption of a child by a married man, enabling a woman to adopt a child under certain circumstances, and enabling the daughter, widow and mother to inherit the property along with the son. On the procedural side the establishment of family courts in some States has facilitated speedy disposal of cases.

111. The other communities in India are governed by their respective personal laws including customary laws. The Indian Government believes in non-interference in the personal laws of the minority communities unless the initiatives come from such community. Towards this end, it has also made a declaration to the Convention on the Elimination of All Forms of Discrimination against Women. Christian marriages can be solemnized under the Christian Marriages Act as well as in churches according to their respective denominational faith.

112. The laws relating to marriage and divorce among Parsis is contained in the Parsi (Marriage and Divorce) Act, 1936. On the recommendation and proposals of the Board of Trustees of the Parsi Panchayat, this Act was amended to enlarge the scope of some of the provisions of the principal Act so

as to bring them on the lines of the provisions of the Hindu Marriage Act, 1955 providing for minimum age of marriage for girls and boys, introduction of new grounds of dissolution of marriage and inter-spousal obligations to provide maintenance.

113. Marriage and divorce are also permissible under the Special Marriage Act 1954 for all communities irrespective of their religious belief.

114. A particular problem associated with Indian society and tradition that is considered as a social evil by the Government of India as well as enlightened sections is the marriage-money or dowry to be paid to the groom by the bride's family for marriage. Demand for dowry has been considered a major reason for escalation of familial violence against women. In order to combat this menace, the Dowry Prohibition Act was passed in 1961 and the same has been amended further to make punishment for offences under the Act more stringent. The burden of proof that there was no demand for dowry has been put on the person who is alleged to have taken or abetted the taking of dowry. Any advertisement which relates to the offering of any share of property in consideration of marriage has also been made punishable.

115. On familial violence, the Indian Penal Code has been amended to provide a new offence called cruelty to wife by her husband or his relatives which has been made punishable with imprisonment up to three years and a fine. Generally, cruelty has been defined as any wilful conduct which is of such a nature or is likely to drive the woman to commit suicide or to cause grave injury or damage to the life, limb or health (whether mental or physical) of the woman, or harassment of a woman with a view to coercing her or her relatives to meet any unlawful demand for property or valuable security. Provision has also been made for an inquest by an executive magistrate and for a post mortem in all cases where a woman has, within seven years of her marriage, committed suicide or died in circumstances raising a reasonable suspicion that some other person was the cause of her death. Post mortem has also been provided for in all cases where a married woman had died within seven years of her marriage and a relative of such woman has made a request (sect. 174, Criminal Procedure Code). Corresponding amendments have been introduced in the Indian Evidence Act to provide that where a woman has committed suicide within a period of seven years from the date of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the court may presume that such suicide has been abetted by her husband or by such relative of her husband (sect. 113A, Indian Evidence Act).

116. Governmental actions including legal measures can succeed in this area only with the full cooperation of an enlightened public to effectively prevent the social evil. This is an area for voluntary organizations to play an important role. In fact, there are some women's organizations in the country which are rendering significant service to highlight specific cases of dowry-related violence and thus help governmental machinery to effectively deal with them. It takes time to completely get over this social evil. The Government remains committed to doing its best.

Article 24

117. As stated in the earlier reports, every child in India without any discrimination has a right to protection as a minor and the same is governed by the Indian Constitution and relevant laws relating to family and marriage. A National Policy for Children was designed by the Government for the welfare of children, and is implemented by the Ministry of Welfare. There is no change in position on other provisions. As regards neglected and delinquent children, the Juvenile Justice Act lays down a comprehensive scheme for their care, protection, treatment, development and rehabilitation in accordance with internationally accepted rights, standards, principles and obligations relating to juveniles.

118. Since the last report, India has ratified the Convention on the Rights of the Child and gives highest priority to efforts to promote and protect child rights and endeavours to create conditions in which children may take an active and creative part in the social and political life of the country.

119. Child labour is prevalent in India, due to social as well as economic reasons. Despite the efforts of the Government, the social reality cannot be overcome because poor parents would rather prefer the children to go to work and earn even a little than send them to school. In certain industries where there is a premium on suppleness, for example, in the match and carpet industries, plantations or bidi rolling, child labour is particularly prevalent. In furtherance of the commitment to protect the rights of the child but taking into account the social and economic reality especially of poor parents, the Government has developed a multidimensional approach to tackle this problem. The approach basically involves three aspects: (a) the Legislative Action Plan; (b) the focusing of general development programmes to benefit child labour wherever possible; and (c) project-based plans of action in areas of high concentration of child labour. Employment of children in certain hazardous industries has been prohibited by enacting the Child Labour (Prohibition and Regulation) Act. Under the National Policy on Child Labour several projects have been undertaken in the match industry in Sivakasi, Tamil Nadu; the precious stone polishing industry in Jaipur, Rajasthan; the slate pencil making industry in Mandsaur, Madhya Pradesh; the slate industry in Markapur, Andhra Pradesh; the handmade carpet weaving industry in Mirzapur, Bhadohi, Uttar Pradesh; the glass industry in Ferozabad, Uttar Pradesh; the brassware industry in Moradabad, Uttar Pradesh; the lock making industry in Aligarh, Uttar Pradesh; and the tile industry in Jaggampet, Andhra Pradesh. It has also been proposed to completely eliminate child labour in the project at Mandsaur in Madhya Pradesh and Jaggampet in Andhra Pradesh in a period of one year. Projects have been launched to eliminate child labour in 10 States/Union territories, viz. Mizoram, Manipur, Meghalaya, Tripura, Nagaland, Sikkim, Arunachal Pradesh, Goa, Chandigarh and Pondicherry.

120. On 15 August 1994, the Prime Minister of India called for the total elimination of child labour from hazardous employment by the year 2000. A special programme has been evolved with an outlay of nearly US$ 300 million (Rs 8,500 million) to take an estimated 2 million children out of hazardous employment. For the year 1994/95, an outlay of Rs 340 million has been earmarked with assurance of more funds, depending on the performance.

121. A National Authority for elimination of child labour headed by the Labour Minister was constituted in September 1994 to lay down policies and programmes for elimination of child labour, to monitor programmes on implementation and coordinate these programmes. The purpose of securing convergence of services under this National Authority is to provide education and health inputs for children taken out of work in a cost effective manner and to provide means of economic sustenance for the parents of these children. Under the national child labour projects, voluntary agencies are being financially assisted to the extent of 75 per cent for taking up welfare projects for working children.

122. Under the International Programme for the Elimination of Child Labour (IPEC), which has been established by the ILO, an outlay of Rs 85 million over 89 projects has been approved and these projects are at different stages of implementation covering a total number of about 55,000 children. In June 1995, the Government of India decided that it would itself fund all projects related to the elimination of child labour.

Article 25

123. There is no change in the position on the provisions of this article of the Covenant since the last report and the same applies. However, a notable development in respect of access to public service is the decision of the Supreme Court in the Indra Sawhney v. Union of India AIR 1993 SC 47, commonly known as the Mandal Commission case. In order to fulfil the constitutional promise of affirmative action, the Government has decided to implement the report of the Second Commission. Accordingly, it issued an official memorandum reserving 27 per cent of the seats for socially and economically backward classes in central civil services, public sector units and financial institutions including public sector banks, in addition to seats already reserved for Scheduled Castes and Scheduled Tribes. The Supreme Court has upheld the validity of the above-mentioned memorandum as being supportive of affirmative action programmes providing the members of the historically disadvantaged groups suffering from past discrimination an opportunity to enter into public service so as to set right the manifest imbalance in the field of public employment. However, the Supreme Court has held that reservations, being an extreme form of measure or affirmative action, should be confined to minority seats, i.e. they should not exceed 50 per cent except in extraordinary situations and should not extend to promotions. Once the backward classes of citizens enter the service the efficiency of the administration demands that these members too compete with others and earn promotion. The Court held that it would be permissible for the State to extend concession and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration.

124. The Supreme Court has also directed the Government of India to identify and exclude socially advanced persons/sections from the "other backward classes" by applying the relevant socio-economic criteria so that only the truly backward should get the benefit of reservation, and set up a body to look into the requests and complaints regarding over-inclusion and under-inclusion respectively.

Article 27

125. In India, the Constitution recognizes religious and linguistic minorities and guarantees the right to practise and conserve one's religion, language and culture. Minorities can also establish their own educational institutions.

126. Since the consideration of the last report, the Government of India has set up the National Commission for Minorities under the National Commission for Minorities Act, 1992 with the view to protecting the constitutional and legal rights of the minorities. The Minorities Commission evaluates the progress of the development of minorities under the Union and in the States.

127. Apart from looking into specific complaints regarding violation of individual rights, it also monitors the working of the safeguards provided under the Constitution and other laws and makes recommendations for the effective implementation of the same. It also conducts studies, research and analyses of the issues relating to socio-economic and educational development of minorities and makes appropriate suggestions to the central/State Governments. In performing its functions, the Commission is vested with the powers of a civil court trying a suit which enables it to summon and enforce the attendance of any person, requiring the discovery or production of any document, receiving evidence on affidavits, requisitioning copies of any public record and any other prescribed matter.

128. To safeguard the interests of linguistic minorities a special officer is appointed to investigate all matters relating to the constitutional rights of the minorities.

129. The Minorities Commission is required to submit annual reports to the Government. These reports are tabled before both Houses of Parliament along with a memorandum by the centre/State respectively and the reasons for non-acceptance, if any, of any of such recommendations. The special officers for linguistic minorities are also required to submit reports and such reports are to be laid before each House of Parliament.